

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TERESA L. JOHNSON,

2:13-CV-524 JCM (CWH)

Plaintiff(s),

V.

JOHN BONAVENTURA, et al.,

Defendant(s).

ORDER

16 On March 27, 2013, defendant, Constable John Bonaventura (“Bonaventura”), filed a petition
17 on behalf of himself and his co-defendant, Las Vegas Township Constable’s Office (“LVTCO”), for
18 removal from state court. (Doc. #1). Presently before the court is plaintiff’s, Teresa L. Johnson
19 (“Mrs. Johnson”), timely filed motion to remand. (Doc. #4). Defendants filed a response in
20 opposition. (Doc. #6). Plaintiff did not file a reply.

21 || I. Factual Background

22 Mrs. Johnson alleges that both defendants intentionally harassed, falsely imprisoned, and
23 maliciously prosecuted her. (*See* Doc. #4, Ex. A). She accuses LVTCO of negligent hiring, training,
24 supervision, and retention, with respect to Bonaventura. (*Id.*). These causes of action are premised
25 on the conduct of defendant Bonaventura. (*Id.*). At the time the alleged incidents occurred,
26 Bonaventura was living with Mrs. Johnson’s estranged husband. Bonaventura and Mrs. Johnson’s
27 husband had been “close” friends for over fifteen years. (*Id.*).

1 On September 24, 2011, Mrs. Johnson and her son went to the residence where both
 2 Bonaventura and her husband resided at the time. (*Id.* at 9:11-22). Upon seeing no one outside, her
 3 son allegedly shouted something toward the residence. (*Id.* at 9:23, 11:3). Mrs. Johnson drove away.
 4 (*Id.* at 9:25). Shortly thereafter, she saw that an SUV with flashing lights was pursuing her at high
 5 speed. (*Id.* at 9:27). Upon pulling over for the emergency vehicle, she discovered that the driver was
 6 Bonaventura. (*Id.* at 10:6). Mrs. Johnson alleges that Bonaventura was in plain clothes and failed to
 7 identify himself as law enforcement. (*Id.* at 10:4). Believing Bonaventura was acting without proper
 8 authority, she fled the scene. (*Id.* at 10:8). Bonaventura pursued, allegedly pulling alongside Mrs.
 9 Johnson after she failed to pull over. (*Id.* at 10:14). After Mrs. Johnson communicated that she had
 10 placed a call to 9-1-1 and was reporting the incident to the Las Vegas Metropolitan Police
 11 Department (“LVMPD”), Bonaventura fled the scene. (*Id.* at 10:15).

12 On September 28, 2011, after Mrs. Johnson had already filed a report regarding
 13 Bonaventura’s conduct with LVMPD, Bonaventura executed a declaration of arrest for Mrs.
 14 Johnson. (*Id.* at 11:1). In the declaration, he claimed that Mrs. Johnson had thrown eggs at his patrol
 15 unit while both vehicles were still parked at the residence. (*Id.* at 11:4). Mrs. Johnson denies that the
 16 egging incident occurred. (*Id.* at 11:19). Bonaventura alleges that he pursued Mrs. Johnson because
 17 he “felt it prudent” to investigate this alleged crime—vandalism and intimidation via egging. (*Id.* at
 18 11:5). His declaration asserts that because he was investigating an alleged crime, Mrs. Johnson’s
 19 reckless driving, a misdemeanor on its own, also constituted evading a police officer. (*Id.* at 11:1-
 20 13). Evading a police officer is a felony. (*See id.* at 12:14). Earlier that same day, two deputy
 21 constables had arrested Mrs. Johnson at her place of work. (Doc. #4, Ex. A at 12: 4-12). She was
 22 held at the Clark County Detention Center on both the misdemeanor reckless driving and felony
 23 evasion charges until September 30, 2011. (*Id.* at 12:12).

24 After Mrs. Johnson’s release, the Clark County district attorney’s office (“DA”) chose to
 25 prosecute her only for the misdemeanor of reckless driving, dropping the felony charge. (*Id.* at
 26 12:16). When neither Bonaventura nor any other witness on behalf of the constable’s office appeared
 27 in court, the DA dismissed that charge as well. (*Id.* at 12: 23-28).

28

1 **II. Legal Standard**

2 A complaint filed in state court may be removed to federal court if the federal court would
 3 have had original jurisdiction over the action had it been brought there in the first place. *See* 28
 4 U.S.C. § 1441(a). This court has original subject matter jurisdiction over two types of cases. First,
 5 pursuant to 28 U.S.C. § 1332(a), the court has diversity jurisdiction over suits between citizens of
 6 different states, for which the amount in controversy exceeds \$75,000. Second, pursuant to 28 U.S.C.
 7 § 1331, this court has federal question jurisdiction over “all civil actions arising under the
 8 Constitution, laws, or treaties of the United States.”

9 In deciding whether removal is proper, courts strictly construe the removal statute against
 10 finding jurisdiction, and the party invoking the statute bears the burden of establishing that removal
 11 was appropriate. *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th
 12 Cir. 2009); *see also California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th Cir. 2004)
 13 (“The removal statute is strictly construed against removal jurisdiction, and the burden of
 14 establishing federal jurisdiction falls to the party invoking the statute”). “Where doubt regarding the
 15 right to removal exists, a case should be remanded to state court.” *Matheson v. Progressive Specialty*
 16 *Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th
 17 Cir. 1992).

18 **III. Analysis**

19 *A. Federal Question*

20 A suit arises “under the Constitution, laws, or treaties of the United States,” if “the plaintiff’s
 21 well-pleaded complaint raises issues of federal law.” *City of Chi. v. Int’l Coll. of Surgeons*, 522 U.S.
 22 156, 163 (1997). As explained by the Supreme Court, “the presence of even one claim ‘arising
 23 under’ federal law is sufficient to satisfy the requirement that the case be within the original
 24 jurisdiction of the district court for removal.” *Wis. Dep’t of Corr. v. Schacht*, 524 U.S. 381, 386
 25 (1998).

26 Mrs. Johnson’s complaint does not present a federal question. Defendant Bonaventura argues
 27 that federal question jurisdiction exists under 28 U.S.C. § 1331 by attempting to show that plaintiff
 28

1 has, in effect, pled a federal civil rights claim under 42 U.S.C. § 1983. However, Mrs. Johnson's
 2 complaint does not plead a claim under, or even cite, 42 U.S.C. § 1983. Nor does the complaint
 3 allege a federal cause of action, or even refer to, any other federal law. Mrs. Johnson brings four
 4 causes of action: negligence in hiring, training, supervision, and retention; false imprisonment;
 5 intentional infliction of emotional distress; and malicious prosecution. (See Doc. #4, Ex. A). Each
 6 claim arises under state law and the resolution of each requires resolution of state law issues only.
 7 No federal claim is invoked and no federal question is implied.

8 The fact that the conduct Mrs. Johnson alleges may be a sufficient basis for the federal cause
 9 of action does not preclude her from instead pursuing relief under Nevada state causes of action.
 10 Bonaventura's brief correctly states that “[t]he existence of concurrent state remedies is not a bar to
 11 a [§]1983 action.” (Doc. #6, 3:17). However, the converse is also true: the existence of a § 1983
 12 claim is not a bar to a state cause of action. In fact, 42 U.S.C. § 2000h-4 of the Civil Rights Act
 13 states:

14 Nothing contained in any title of this Act shall be construed as indicating an intent
 15 on the part of Congress to occupy the field in which any such title operates to the
 16 exclusion of State laws on the same subject matter, nor shall any provision of this Act
 be construed as invalidating any provision of State law unless such provision is
 inconsistent with any of the purposes of this Act, or any provision thereof.

17 42 U.S.C. § 2000h-4. Regardless of whether the elements established in Mrs. Johnson's complaint
 18 are the same elements required by a federal cause of action, she has pled them under state law
 19 theories. The Civil Rights Act explicitly allows for this.

20 Mrs. Johnson's complaint poses no federal question nor any question of state law that turns
 21 on the answer to a federal law question. Therefore, there is no federal question jurisdiction. The court
 22 recognizes “that the plaintiff is the master of the complaint, that a federal question must appear on
 23 the face of the complaint, and that the plaintiff may, by eschewing claims based on federal law,
 24 choose to have the case heard in state court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99
 25 (1987).

26 *B. Artful Pleading*

27 Defendants' next argument is that the court should re-characterize Mrs. Johnson's complaint

1 as federal under the artful pleading doctrine. That doctrine does not, however, apply to Mrs.
 2 Johnson's complaint.

3 Under Ninth Circuit law, "a complaint that is 'artfully pleaded' to avoid federal jurisdiction
 4 may be recharacterized as one arising under federal law." *Olguin v. Inspiration Consol. Copper Co.*,
 5 740 F.2d 1468, 1472 (9th Cir. 1984) (emphasis added) (citing *Franchise Tax Bd. of State of Cal. v.*
 6 *Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 22 (1983)). A complaint falls under the
 7 artful pleading doctrine when it (a) omits from the complaint federal law essential to its claim or (b)
 8 casts in state law terms a claim that can only be made under federal law. *Id.*

9 Mrs. Johnson's complaint does not fall under the artful pleading doctrine. Each cause of
 10 action pled in her complaint is premised on pure questions of state law. She neither (a) omitted from
 11 her complaint necessary federal law, nor (b) cast in state law terms a claim that could only be made
 12 under federal law.

13 Finally, defendants argue that the state law cases cited by plaintiff are unpersuasive because
 14 they do not discuss jurisdiction or the artful pleading doctrine. However, the cases are relevant
 15 because they show that the causes being claimed by the plaintiff are well-established state law causes
 16 of action. Regardless of any discussion of jurisdiction, the discussion in the cited cases indicates that
 17 the issues being adjudicated turn purely on Nevada law. Again, the existence of a federal cause of
 18 action "does not overcome the ... rule[]that the plaintiff is the master of the complaint, that a federal
 19 question must appear on the face of the complaint, and that the plaintiff may, by eschewing claims
 20 based on federal law, choose to have the case heard in state court." *Caterpillar* 482 U.S. at 398-99.

21 *C. Diversity Jurisdiction*

22 Under 28 U.S.C. 1332(a), this court has jurisdiction over suits between citizens of different
 23 states, for which the amount in controversy is greater than \$75,000. To support federal diversity
 24 jurisdiction, parties must have complete diversity, or all plaintiffs must be citizens of a different state
 25 than all defendants. *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2004). Mrs. Johnson
 26 alleges that at all times relevant to this case she was, and still is, a resident of Nevada. She also
 27 alleges that at all times relevant to this case Bonaventura was, and still is, a resident of Nevada. (Doc.
 28

1 #4, Ex. A, 8). Nothing on the record indicates otherwise. This court reasonably infers from the record
2 that both parties are citizens of Nevada. Therefore, complete diversity does not exist between the
3 parties and this court lacks diversity jurisdiction over the matter.

4 **IV. Attorney's Fees**

5 Mrs. Johnson requested an award of attorney's fees and other costs and expenses associated
6 with filing this motion to remand, pursuant to 28 U.S.C. § 1447(c). The court, in its discretion,
7 declines to grant such a request. *Gotro v. R & B Realty Group*, 69 F.3d 1485, 1487 (9th Cir. 1995)
8 (citing *Moore v. Permanente Med. Group, Inc.*, 981 F.2d 443 (9th Cir. 1992)) ("By adding attorney's
9 fees to costs which may be awarded after remand, Congress provided the statutory authorization
10 necessary to award fees without a finding of bad faith. Congress has unambiguously left the award
11 of fees to the discretion of the district court.").

12 **V. Conclusion**

13 Based on the foregoing discussion, this court lacks subject matter jurisdiction under both 28
14 U.S.C. §§ 1331 and 1332(a).

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Mrs. Johnson's
17 motion to remand (doc. #4) be, and the same hereby is, GRANTED.

18 IT IS FURTHER ORDERED that this case be, and the same hereby is, REMANDED to state
19 court due to this court's lack of subject matter jurisdiction.

20 DATED May 28, 2013.

22 
23

UNITED STATES DISTRICT JUDGE
24
25
26
27
28